

STATE OF MICHIGAN  
COURT OF APPEALS

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FRANK NALI,

Plaintiff-Appellant,

v

NORTHWEST AIRLINES, INC.,

Defendant-Appellee.

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UNPUBLISHED

September 18, 2003

No. 240421

Wayne Circuit Court

LC No. 01-136120-CZ

Before: Smolenski, P.J., and Murphy and Wilder, JJ.

PER CURIAM.

Plaintiff, acting *in propria persona*, appeals as of right the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff and his son purchased round trip tickets from defendant for a trip from Detroit to Miami. When plaintiff and his son arrived at the Miami airport for their return flight, they were informed that the flight had been cancelled due to mechanical problems. They were given the option of flying to Detroit on a Continental Airlines flight via a connecting flight in Cleveland, Ohio, or flying to Detroit on defendant's carrier the next day. Plaintiff and his son flew to Cleveland, and then on to Detroit. After arriving in Detroit, plaintiff requested travel vouchers for transportation to his home. When his request was denied plaintiff caused a disturbance, and was escorted from the airport by the police. Plaintiff later received reimbursement for taxicab fare to his home.

Plaintiff filed suit in the United States District Court for the Eastern District of Michigan alleging breach of contract, misrepresentation, negligence, and violation of the Michigan Consumer Protection Act (MCPA), MCL 445.901 *et seq.* The federal court dismissed the action for lack of subject-matter jurisdiction on the ground that the amount in controversy did not exceed \$75,000.

Subsequently, plaintiff filed suit in Wayne Circuit Court alleging breach of contract, misrepresentation, negligence, infliction of mental and emotional distress, and violation of the MCPA. Defendant moved for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that plaintiff's state law claims of misrepresentation, negligence, and violation of the MCPA were preempted by 49 USC 41713(b) of the Airline Deregulation Act of 1978 (ADA),

and that plaintiff's claim of breach of contract failed to state a claim on which relief could be granted. The trial court granted defendant's motion and dismissed the case with prejudice.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2002).

Congress enacted the ADA in 1978 to deregulate domestic airline transportation. *Morales v Trans World Airlines, Inc*, 504 US 374, 378; 112 S Ct 2031; 119 L Ed 2d 157 (1992). The ADA preempts all state laws or regulations that are "related to a price, route, or service of any air carrier that may provide air transportation under this subpart." 49 USC 41713(b)(1). A state law is "related to" airline routes or services if it has "a connection with or reference to" those routes or services. *Morales, supra* at 384. The term "service" has been interpreted to include elements such as ticketing, provision of food and drink, and baggage handling, as well as actual transportation. *Hodges v Delta Airlines, Inc*, 44 F3d 334, 336 (CA 5, 1995). The ADA's preemption provision is to be interpreted broadly, and it preempts state actions beyond those specifically prescribing rates, routes, and services. *Id.* (citing *Morales, supra*). Only state actions that affect airline services in too tenuous, remote, or peripheral a manner are not preempted. *Morales, supra* at 390.

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition. We disagree and affirm the trial court's decision. Some tort claims, such as those based on physical injury, are not preempted by the ADA. See, e.g., *Chouest v American Airlines, Inc*, 839 F Supp 412 (ED La, 1993) (plaintiff injured when tour bus door closed on her arm; transportation on tour bus found not a service of the air carrier). However, plaintiff's tort claims of negligence, misrepresentation, and infliction of mental and emotional distress, and his claim of violation of the MCPA, stem directly from defendant's cancellation of plaintiff's return flight due to mechanical problems and the provision of alternative transportation to Detroit. Transportation of passengers and maintenance of aircraft are core services of an airline. Plaintiff's tort claims are directly connected to those services, and thus are preempted by the ADA. 49 USC 41713(b)(1); *Morales, supra*; *Hodges, supra*.

Similarly, plaintiff's claim under the MCPA is based on the same facts as are the tort claims, and is directly related to defendant's services. This claim is also preempted by the ADA. See *Gilman v Northwest Airlines, Inc*, 230 Mich App 293; 583 NW2d 536 (1998) (action under the Civil Rights Act (CRA), MCL 37.2101 *et seq.*, alleging employment discrimination based on physical characteristics such as sex and age that do not relate to an airline's service is not preempted by the ADA); *Fitzpatrick v Simmons Airlines, Inc*, 218 Mich App 689; 555 NW2d 479 (1996) (action under the CRA alleging employment discrimination based on characteristics such as height and weight relates to an airline's service and is preempted by the ADA).

Furthermore, the trial court correctly granted summary disposition of plaintiff's claim of breach of contract.<sup>1</sup> Defendant's conditions of contract provides that schedules may be changed or that carriers may be substituted without notice. Defendant's tariff provides that defendant is

<sup>1</sup> In general, a breach of contract action alleging that an airline violated a contract is not preempted by the ADA. *American Airlines, Inc v Wolens*, 513 US 219; 115 S Ct 817; 130 L Ed 2d 715 (1995).

not liable for damages caused by its failure to operate any flight according to schedule, and that if defendant is unable to provide transportation on its own aircraft, it will provide alternative transportation on another carrier. Defendant offered and plaintiff accepted alternative transportation to Detroit via a Continental Airlines flight with a connecting flight originating in Cleveland, Ohio.<sup>2</sup> Plaintiff had a reservation in coach class on defendant's flight, and flew coach class on Continental Airlines. Defendant reimbursed plaintiff for taxicab fare to his home after he returned to Detroit. Plaintiff did not incur any monetary expenses related to the return trip. Mental distress damages are not recoverable in an action for breach of contract. *Kewin v Massachusetts Mutual Life Ins Co*, 409 Mich 401, 419-420; 295 NW2d 50 (1980). Plaintiff failed to state a claim for breach of contract on which relief could be granted.

Affirmed.

/s/ Michael R. Smolenski  
/s/ William B. Murphy  
/s/ Kurtis T. Wilder

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<sup>2</sup> Plaintiff's claim that he was "forced" to accept the alternative flight to Detroit via Cleveland because he could not pay for overnight accommodations in Miami directly contradicts the allegation in his federal court complaint that he accepted the alternative flight so that his son could return to Detroit in time for a family reunion.